

### § 296.3

*Recipient* means an organization receiving an award directly from NIST under the Program.

*Small-sized business* means a business that is independently owned and operated, is organized for profit, has fewer than 500 employees, and meets the other requirements found in 13 CFR part 121.

*Societal challenge* means a problem or issue confronted by society that when not addressed could negatively affect the overall function and quality of life of the Nation, and as such justifies government attention.

*State*, except for the limited purpose described in paragraph (1) of this section, means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under the United States Housing Act of 1937.

*Subaward* means an award of financial assistance made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the legal agreement is called a contract, but does not include procurement of goods and services.

*Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided.

*Transformational results* means potential project outcomes that enable disruptive changes over and above current methods and strategies. Transformational results have the potential to radically improve our understanding of systems and technologies, challenging the status quo of research approaches and applications.

*United States owned company* means a for-profit organization, including sole proprietors, partnerships, limited liability companies (LLCs), and corporations, that has a majority ownership by individuals who are citizens of the United States.

### 15 CFR Subtitle B, Ch. II (1–1–14 Edition)

#### § 296.3 Types of assistance available.

Subject to the limitations of this section and § 296.4, assistance under this part is available to eligible companies or joint ventures that request either of the following:

(a) *Single company awards*: No award given to a single company shall exceed a total of \$3,000,000 over a total of 3 years.

(b) *Joint venture awards*: No award given to a joint venture shall exceed a total of \$9,000,000 over a total of 5 years.

#### § 296.4 Limitations on assistance.

(a) The Federal share of a project funded under the Program shall not be more than 50 percent of total project costs.

(b) Federal funds awarded under this Program may be used only for direct costs and not for indirect costs, profits, or management fees.

(c) No large-sized business may receive funding as a recipient or subrecipient of an award under the Program. When procured in accordance with procedures established under the Procurement Standards required by part 14 of Subtitle A of this title, recipients may procure supplies and other expendable property, equipment, real property and other services from any party, including large-sized businesses.

(d) If a project ends before the completion of the period for which an award has been made, after all allowable costs have been paid and appropriate audits conducted, the unspent balance of the Federal funds shall be returned by the recipient to the Program.

#### § 296.5 Eligibility requirements for companies and joint ventures.

Companies and joint ventures must be eligible in order to receive funding under the Program and must remain eligible throughout the life of their awards.

(a) A company shall be eligible to receive an award from the Program only if:

(1) The company is a small-sized or medium-sized business that is incorporated in the United States and does a

majority of its business in the United States; and

(2) Either

(i) The company is a United States owned company; or

(ii) The company is owned by a parent company incorporated in another country and the Program finds that:

(A) The company's participation in TIP would be in the economic interest of the United States, as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; and agreement with respect to any technology arising from assistance provided by the Program to promote the manufacture within the United States of products resulting from that technology, and to procure parts and materials from competitive United States suppliers; and

(B) That the parent company is incorporated in a country which affords to United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized to receive funding under the Program; affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.

(b) NIST may suspend a company or joint venture from continued assistance if it determines that the company, the country of incorporation of the company or a parent company, or any member of the joint venture has failed to satisfy any of the criteria contained in paragraph (a) of this section, and that it is in the national interest of the United States to do so.

(c) Members of joint ventures that are companies must be incorporated in the United States and do a majority of their business in the United States and must comply with the requirements of paragraph (a)(2) of this section. For a joint venture to be eligible for assistance, it must be comprised as defined in § 296.2.

#### **§ 296.6 Valuation of transfers.**

(a) This section applies to transfers of goods, including computer software, and services provided by the transferor related to the maintenance of those goods, when those goods or services are transferred from one joint venture member to another separately-owned joint venture member.

(b) The greater amount of the actual cost of the transferred goods and services as determined in accordance with applicable Federal cost principles, or 75 percent of the best customer price of the transferred goods and services, shall be deemed to be allowable costs. Best customer price means the GSA schedule price, or if such price is unavailable, the lowest price at which a sale was made during the last twelve months prior to the transfer of the particular good or service.

#### **§ 296.7 Joint venture registration.**

Joint ventures selected for assistance under the Program must notify the Department of Justice and the Federal Trade Commission under section 6 of the National Cooperative Research Act of 1984, as amended (15 U.S.C. 4305). No funds will be released prior to receipt by the Program of copies of such notification.

#### **§ 296.8 Joint venture agreement.**

NIST shall not issue a TIP award to a joint venture and no costs shall be incurred under a TIP project by the joint venture members until such time as a joint venture agreement has been executed by all of the joint venture members and approved by NIST.

#### **§ 296.9 Activities not permitted for joint ventures.**

The following activities are not permissible for TIP-funded joint ventures:

(a) Exchanging information among competitors relating to costs, sales, profitability, prices, marketing, or distribution of any product, process, or service that is not reasonably required to conduct the research and development that is the purpose of such venture;

(b) Entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving